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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

VICKIE SINGER, *et al.*,

Petitioner,

vs.

ROBERT WADMAN, *et al.*,

Respondents.

VICKIE SINGER, *et al.*,

Petitioner,

vs.

WALTER D. TALBOT,

Respondent.

RESPONDENTS ROBINSON, ADKINS AND CHRISTIANSEN'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

Will justice be served if the United States Supreme Court reviews a decision of the United States Court of Appeals for the Tenth Circuit when the petition for certiorari fails to set forth any reasons under Rule 17 of the Supreme Court Rules why such petition should be granted; when petitioner admits in her petition that "the mature, compelling themes that deserve the blessing of a writ are not exhibited here"; and when the essence of petitioner's argument is that the court should grant certiorari based upon no more than "judicial instinct"?

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STATEMENT OF THE CASE

Defendants-respondents Robert Adkins and Terry Christiansen were the prosecuting attorneys in Summit County. Defendant-respondent Ron Robinson was Sheriff of Summit County. These respondents rely upon and incorporate by reference herein the Statement of Facts contained in the United States District Judge David K. Winder's September 3, 1982 Memorandum Decision and Order. The text of Judge Winder's opinion can be found at 595 F.Supp. 188 (D. Utah 1984), and is contained in the supplemental appendix on file herein. However, the Statement of the Case as recited by petitioner in her petition is so misleading and false that these respondents feel compelled to respond briefly.

This is a case where John Singer was shot and killed when he pulled and aimed a gun at police who were attempting to make a lawful arrest pursuant to valid warrants.

Petitioner does not cite to the record as authority for any of her claims since such claims cannot be supported by the record. For example, despite petitioner's vain protestations to the contrary, there is not a thread of evidence suggesting a Church-State vendetta against John Singer. Moreover, it is simply not true when petitioner says that all of the defendants were members of the Mormon church.

In the petition it is claimed that the Singers were properly educating their children and were prosecuted at the whim of the so-called Church-State. As the two lower courts both found, such a claim is without merit. Utah law specifies that if parents desire to teach their children at home, they should do so by teaching the same subjects for the same length of time as children are taught in the public schools. *Utah Code Ann.* §§53-24-1 to 4 (1978). This John and Vickie Singer flatly refused to do.

From June of 1973 to January of 1979, Mr. and Mrs. Singer purported to teach their children at home in lieu of public education. However, by petitioner's own admission, on those days when the children were actually taught, the school day consisted of two to two-and-a-half hours of instruction in the morning. (R. Vol. XX, p. 404; R. Vol. XXI, pp. 55, 133) The home instruction routine was loosely structured and the Singers were opposed to set schedules, roll keeping and testing. (R. Vol. XX, pp. 251-252; R. Vol. XVIII, p. 26) The children were allowed to play and were unsupervised in the afternoons. (R. Vol. XXI, p. 133; R. Vol. XXX, p. 14; R. Vol. XXXI, p. 48; R. Vol. XXII, p. 19; R. Vol. XXIII, p. 48) During the course of the home "schooling" there would be substantial periods of time — several months at a stretch — when "no school" was held at all. (R. Vol. XXIII, pp. 10-11; R. Vol. XXI, pp. 61, 137; R. Vol. XVIII, p. 148) When the Singer children were evaluated their performance indicated that the education they were receiving was severely deficient. Unfortunately, those same deficiencies were painfully obvious when depositions of the Singer children were taken. (R. Vol. XXIII, Ex. 1; Depositions of Singer Children)

Because he refused to properly teach his children, and because he refused all proffers of aid or assistance calculated to provide the children with a decent education, John Singer was prosecuted in the Juvenile Court for child neglect. After a trial he was convicted. Thereafter, Singer did not appeal, he ignored court orders and warrants, refused to peacefully submit to arrest, married himself in a bigamous and polygamous marriage to a second wife, Shirley Black, and had Mrs. Black and her children move in with him and his family notwithstanding a court order awarding custody of the Black children to their father, Dean Black.

Because Singer refused to submit voluntarily to arrest, despite valid warrants and orders for his arrest, law enforcement officers sought to devise an arrest plan which would provide him, his family and the officers with a maximum degree of safety. (Supp. Appendix at 56-58.) Petitioner's claim that respondents themselves regarded the arrest plan as a "death plan" is preposterous. Adkins and Christiansen did not even know what the plan was. Those defendants who did participate in the planning honestly felt the plan would be safe and successful.

Although neither Robinson, Adkins nor Christiansen were present at nor had any supervisory responsibility over the January 18, 1979, arrest attempt, it is clear that Singer's death on that day resulted from his own unlawful action. The arrest was thwarted when Singer ignored the officers when they shouted "halt, police," and Singer pulled a hidden and loaded pistol from the waist band inside his coat and aimed the weapon directly at a law enforcement officer. (*Id.* at 65-106.) The officer, fearing for his life and in an attempt to protect himself and his companions, shot and killed John Singer.

In their Statement of the Case, petitioner makes repeated reference to a conspiracy among defendants which culminated in John Singer's death. But as Judge Winder and the Tenth Circuit unanimously found, there was absolutely no evidence of a conspiracy. Nonetheless, petitioner persists in arguing this position notwithstanding the fact that Juvenile Court judges unequivocally and repeatedly testified that no one brought any pressure to bear on them to hear the Singer case or decide it in any certain way; that once proceedings were commenced, judges pleaded with Singer to obtain the services of a lawyer; that numerous offers of free legal assistance were made to and refused by Singer;

that once Singer was convicted of child neglect, he was advised by members of the bar and his friends to appeal the case and again offered free legal assistance, but he refused; that Singer repeatedly refused requests by the court and other persons to compromise at all; that Singer ignored a court order of January 18, 1978, stating that Singer could educate his children at home if he would allow the School District to provide a tutor at District expense; that Singer repeatedly refused to peacefully submit to arrest notwithstanding many requests by the Summit County Sheriff; that law enforcement officers exerted great efforts to plan an arrest of Singer that would carefully consider his safety and the safety of his family; that Singer, without a license, secretly married himself to a second wife, Shirley Black, and refused to allow Dean Black, the lawful husband of Shirley, to see his own children; that on January 18, 1979, Singer was repeatedly asked to halt, throw down his weapon and peacefully submit to arrest and he responded by pulling a loaded weapon with the safety off and aimed it at arresting officers; that immediately after Singer's death, the FBI, an independent entity, was requested to thoroughly investigate the matter and found no violation of civil rights. (Citations to the record in support of the foregoing are contained in Judge Winder's opinion at Supp. Appendix pp. 1-128.)

In short, petitioner's petition is riddled with inflammatory and unfounded conclusions which find no support in the evidence.

SUMMARY OF ARGUMENT

Petitioner fails in her petition to set forth any reason under Rule 17 of the Supreme Court Rules why the petition should be granted. Instead, petitioner merely sets forth a series of unsupported allegations attacking the integrity of the lower federal courts and concludes that the Supreme

Court should grant the petition based upon "judicial instinct." Respondents will not defend the integrity of the federal courts. The carefully considered opinions of the courts below fully demonstrate the integrity and dedication of the judges. Petitioner has failed to attack the *decisions* of those courts; for that reason the petition is inadequate and presents no basis to grant the writ sought.

Additionally, if the court grants the writ it will send confusing signals to the lower courts regarding the propriety of summary judgment in civil rights cases as discussed in the Court's decision of *Harlow v. Fitzgerald,* 457 U.S. 800 (1982). In that case, the Court held that the use of summary judgment was proper in civil rights cases when the trial court could fairly determine that clearly established constitutional rights had not been violated. Were certiorari to be granted here, the lower courts would be loath to ever grant summary judgment and the *Harlow* decision would be meaningless.

Finally, this case has no significance, importance or impact upon the rights secured by our constitution, or federal law. Petitioner simply claims that the lower courts improperly found that no issue of material fact existed. Manifestly, that is no basis for certiorari.

ARGUMENT

POINT I

THE SUPREME COURT OF THE UNITED STATES SHOULD DEMAND MORE THAN GROUNDLESS ACCUSATIONS BEFORE IT REVIEWS THE INTEGRITY OF LOWER FEDERAL COURTS.

The Supreme Court has set forth guidelines for consideration of a petition for certiorari in Rule 17 of the Rules of the Supreme Court of the United States.

Petitioner has failed to even attempt to set forth why under Rule 17 the petition should be granted. Beginning page 9 under the heading of "Reason For Granting the Writ" and continuing for five and one-half pages thereafter, petitioner sets forth her reasons why this Court should review the decision of the Court of Appeals. Not once in those pages is Rule 17 of the Supreme Court rules cited. Not once is the Constitution of the United States cited. Not once is a constitutional issue framed which petitioner contends was wrongly resolved by the courts below. No conflict of the Circuit Courts is referred to. No new important question of federal law decided for the first time in the court below is announced.

In her petition, petitioner nearly concedes that no sufficiently important question of federal law has been decided in this case to warrant review by the Supreme Court. Petitioner states that "the mature, compelling themes that deserve the blessing of a writ are not exhibited here . . . ." Petitioner's reasons for review are not that the decisions below were wrong, rather, petitioner contends that the judges themselves were either involved in a conspiracy or convinced by "the detailed disputation of Judge Winder . . . to let well enough alone." Essentially, it is petitioner's argument that the courts below were either too biased or too lazy to see justice done. Those are grave allegations. The very integrity of four federal judges, one federal district judge and three United States Court of Appeals judges, has been brought into question. This Court should not countenance such an unwarranted and unsupported attack on the federal judiciary. Petitioner has failed to set forth appropriate reasons why this case deserves review. Accordingly, the petition should be denied.

POINT II

REVIEW OF THIS CASE WOULD SEND A CONFUSING AND CONFLICTING SIGNAL TO THE LOWER COURTS.

In *Harlow v. Fitzgerald,* 457 U.S. 800 (1982) the Court discussed the interplay between the need to maintain summary judgment as a viable tool to reduce the social cost of suits against public officials and the Court's alteration of the "good faith" immunity doctrine. In *Harlow* the Court altered the immunity doctrine to eliminate its subjective element and thereby eliminated a substantial road block that prevented summary judgment under the old standard. *Id.* at 814-819.

After careful review of the record in this case, which is evident from both courts' opinions, both the district court and the appellate court determined that this was just the sort of "insubstantial law suit" that needed to be quickly terminated in summary proceedings in order to avoid the social costs which the Court found in *Harlow* can accompany suits brought under 42 U.S.C. §1983.

The lower courts' decisions are entirely consistent with *Harlow*. If certiorari is granted in this case based on nothing more than petitioner's allegations that constitutional issues "have been . . . aborted at the birthing bed," then summary judgment will be rendered an ineffective tool to cull out insubstantial suits. Any and all petitioners for certiorari can contend that their claims were "aborted at the birthing bed" by summary judgment. That argument is a smokescreen designed to hide the fact that no constitutional issues exist. Surely, adoption of such a standard would quickly eliminate summary judgment as a tool of judicial efficiency and would render *Harlow* impotent.

Additionally, the findings of the lower courts are findings as to the sufficiency of the evidence. The district court found that there was no evidence to support a conspiracy and that there was no evidence to support the allegation of excessive force. In *Hanrahan v. Hampton,* 446 U.S. 754 (1982) Justice Powell in his concurring opinion stated that "this court ordinarily leaves questions as to the sufficiency of evidence in a particular case to the courts below." *Id.* at 763. Justice Powell went on to express his concerns that when the trial court finds a record wholly "devoid of proof" and a new trial is granted anyway, then "the prospect of defending such law suits can hardly fail to 'dampen the ardor of all but the most resolute or most irresponsible, in the unflinching discharge of their duties.' (Citation omitted)." *Id.* at 765. Such concerns are applicable here. The trial court has carefully considered the record and found it inadequate to support petitioner's allegations. The appellate court has performed the same exercise, with the same diligence, and reached the same conclusion. In this case the Court should not undertake to review the findings of the lower courts as to the sufficiency of the evidence.

Petitioner suggests that all cases wherein a civil conspiracy has been alleged should proceed to trial. Such a standard is, however, impractical and inconsistent with established law. Both the district court and the appellate court recognized that if summary judgment was unavailable in conspiracy cases, then the principles of *Harlow v. Fitzgerald* would be impossible to apply. The problem which *Harlow* resolved — the preclusion of summary judgment due to a built-in question of fact in the theory of immunity — would be reborn under the guise of conspiracy. Just as the inherent factual issue in immunity formally precluded summary judgment, the inherent factual issue in conspiracy would now prevent summary judgment.

Nearly all actions of government officials are done in concert with some other government official; such as the nature of government. If an allegation of conspiracy will prevent summary judgment, there will be no summary judgment in §1983 cases. That is clearly contrary to the Court's pronouncements in *Harlow* and was recognized by both courts below. In addition to *Harlow,* it should be noted that no court has announced that *every* conspiracy case should proceed to trial. On the contrary, the court in *Mosher v. Saafeld,* 589 F.2d 438, 441 (9th Cir. 1978) held that there must be a material issue of fact regarding the elements of a conspiracy beyond mere vague, conclusory allegations in order for plaintiff to withstand summary judgment. *See also, Ostrer v. Aronwald,* 567 F.2d 551, 553 (2nd Cir. 1977); *Slotnick v. Staviskey,* 560 F.2d 31, 33 (1st Cir. 1977).

POINT III

THIS CASE HAS NO CONSTITUTIONAL SIGNIFICANCE

Petitioner raises no constitutional issues, shows no conflict among the circuit courts and meets none of the criteria necessary for certiorari. The only question which petitioner presents is whether summary judgment was proper in this isolated case. Petitioner asks this Court to make a third review of a lengthy record to see if it can find what Judge Winder and the Tenth Circuit were utterly unable to find, namely, a genuine issue of material fact. The Court has ruled that such fact canvassing is not a task to be served by a grant of certiorari. As stated in *United States v. Johnson,* 268 U.S. 220, 227 (1925), "we do not grant certiorari to review evidence and discuss specific facts."

Whether or not a question of fact exists in this case has already been resolved twice in favor of respondents and without any impact outside the confines of this case. Accordingly, certiorari should be denied.

CONCLUSION

Based on the foregoing, respondents Robinson, Adkins and Christiansen submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

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